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November 24, 2010

E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, District of Columbia 20423-0001

Re: Ex Parte No. 706, Petition of Union Pacific Railroad Company to Institute
a Rulemaking Proceeding to Adopt Reporting Requirements for Positive
Train Control

228316

Dear Ms. Brown:

I attach for electronic filing Norfolk Southern Railway Company's Reply Comments in the subject proceeding.

Please accept my best wishes for a very happy Thanksgiving.

Very truly yours,

Daniel G. Kruger

Attachment

cc: Service List

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE 706

**PETITION OF UNION PACIFIC RAILROAD COMPANY TO INSTITUTE A
RULEMAKING PROCEEDING TO ADOPT REPORTING REQUIREMENTS FOR
POSITIVE TRAIN CONTROL**

**REPLY COMMENTS
OF
NORFOLK SOUTHERN RAILWAY COMPANY**

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Dated: November 24, 2010

I. INTRODUCTION

Norfolk Southern Railway Company (“NSR”) hereby endorses and supports Union Pacific Railroad Company’s Petition to Institute a Rulemaking Proceeding to Adopt Reporting Requirements for Positive Train Control (the “Petition”). In addition, NSR submits that the Board should act expeditiously to institute this proceeding. NSR is presently incurring costs to implement Positive Train Control (“PTC”) technology. Although NSR takes no position at this time on what specific data should be reported or how the reported data should be used, NSR believes that it is essential for the Board to collect the data relating to the costs of designing, installing, operating, and maintaining PTC, and that the data collected be consistent among the railroads incurring the costs. Without this data, it will be impossible for the government and the Board to ensure that NSR is compensated for the significant expenses it has and will incur as a result of the Congressional mandate that it install PTC on its rail lines—a mandate that undermines NSR’s reasonable investor-backed expectations.

II. ANALYSIS

The Rail Safety and Improvement Act of 2008, Pub. L. No. 110-432, Sec. 104(a), 122 Stat. 4848, 4856-57 (enacted Oct. 16, 2008), requires Class I railroads to install PTC by December 31, 2015, on all main lines over which (1) Toxic by Inhalation (“TIH”) and Poisonous by Inhalation (“PIH”) commodities are transported and (2) commuter and passenger transportation is provided. FRA has adopted implementing regulations at 75 Fed. Reg. 2598 (Jan. 15, 2010). The Federal Railroad Administration estimates that Class I railroads will spend

approximately between \$ 9.5 and 10.3 billion dollars on PTC implementation.¹ PTC implementation requires substantial investments, including in radio spectrum acquisition, equipment, locomotive upgrades, wayside detectors, hardware and software, and communications systems. Under the regulations promulgated by the Federal Railroad Administration, NSR estimates that it will need to install PTC on 10,904 route miles. Virtually all of these route miles are subject to the PTC mandate because of TIH and PIH traffic. Only 53.03 miles are subject to the mandate solely and exclusively because of commuter and passenger operations.

Railroads are common carriers, which means that the government requires NSR to provide services for certain types of traffic. 49 U.S.C.S. § 11101 (2010). Among them are TIH and PIH commodities. *Union Pacific RR Co. – Petition for Declaratory Order*, STB Finance Docket No. 35219 (served June 11, 2009). Accordingly NSR cannot refuse to transport TIH and PIH traffic (nor, pursuant to 49 U.S.C.S. § 24308, can NSR ultimately refuse access to Amtrak passenger trains). Because it is a common carrier, NSR cannot avoid the costs of the PTC mandate by exiting the business of transporting TIH and PIH commodities – as other industries can elect to do in response to government mandates imposed on their businesses. Thus, NSR and other railroads must be reasonably compensated for the costs of the PTC mandate through the rate regulatory regime that both directly and indirectly constrains rail prices for the transportation of TIH and PIH commodities or through other means. Collecting such data is an essential first step to ensure that the rate regulatory regime in fact permits railroads to recover all these costs.²

¹ Dept. of Transportation, Federal Railroad Administration, Positive Train Control Systems Regulatory Impact Analysis, Dec. 8, 2009, p.1.

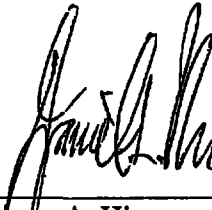
² Although the Board has avoided the issue of PTC costs thus far, it is no longer the case that these costs are speculative or have not yet been incurred. *US Magnesium v. Union Pacific RR Co.*, STB Docket No. 42114, at 41 (served Jan. 27, 2010) (holding that “there is a great deal of uncertainty surrounding PTC investment” and thus that they could not be sufficiently addressed in this particular rate case). NSR has spent money – in fact, over \$60

NSR takes no position on the other steps the Board will need to take to ensure that the railroads are able to recover the PTC costs. But failure by the Board to even collect data on these government-mandated costs would call into serious question whether the rate regulatory regime will permit railroads to recover all PTC costs.

III. CONCLUSION

NSR respectfully submits that the Board must initiate the requested rulemaking to establish reporting requirements that will ensure reliable data exists so the Board can ensure that railroads recover the costs of the PTC mandate.

Respectfully Submitted,



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Dated: November 24, 2010

million since the inception of its PTC program in 2005 – on PTC implementation, with more to come in future years.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2010, I caused to be served a copy of the foregoing document via first class mail or e-mail on:

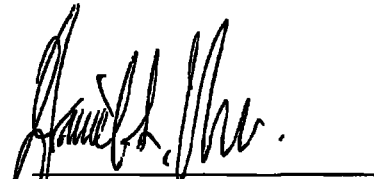
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